

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

ROSCOE LOUIS HOLLOWAY,)	
AIS #154358,)	
)	
Petitioner,)	
vs.)	3:07-CV-186-MEF
)	
BILLY MITCHEM, WARDEN, <i>et al.</i> ,)	
)	
Respondents.)	

SUBMISSION OF EXHIBIT

Come now the Respondents, pursuant to this Court's order on May 2, 2008, and submit a copy of Holloway's guilty plea transcript that also includes the transcript of the hearing from December 12, 2005, on his request to have his sentence split.

Respectfully submitted,

Troy King (KIN047)

Attorney General

By:

/s/Jean-Paul M. Chappell

Jean-Paul M. Chappell

Assistant Attorney General

#CHA073

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of June, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants: Roscoe Holloway, AIS #154358, Limestone Correctional Facility, 28779 Nick Davis Road, Harvest, Alabama 35749.

Respectfully submitted,

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657372/106184-001

IN THE CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT
RANDOLPH COUNTY

STATE OF ALABAMA
Plaintiff,

Versus

ROSCOE HOLLOWAY,
Defendant.

*
*
* CRIMINAL NO
* CC-2005-132
* Wedowee, AL
* 6 October 2005
* 12 December 2005

TRANSCRIPT OF GUILTY PLEA AND SENTENCING BEFORE
THE HONORABLE RAY D. MARTIN,
CIRCUIT JUDGE

A P P E A R A N C E S

For the Plaintiff: E. PAUL JONES, DISTRICT ATTORNEY
FIFTH JUDICIAL CIRCUIT
CHAMBERS COUNTY COURTHOUSE
LaFAYETTE, AL 36862

BY: AMY NEWSOME, ADA

For the Defendant: T. OLIVER KITCHENS, ESQUIRE
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INDEX

GUILTY PLEA	3
SENTENCING	13

GUILTY PLEA

PROCEEDINGS:

THE COURT: Now, first of all I have already called the names of those who are to enter pleas of guilty and I have noted those on the docket.

I understand that each of you desire to change your pleas of not guilty, to pleas of guilty. Before I accept your pleas, it is my duty to inform you of certain constitutional rights that you will waive or give up if you plead guilty. It is also necessary that I determine that you understand the nature of the charge or charges against you, the consequences of your pleas of guilty, that your pleas are voluntarily and intelligently made, and that there is a factual basis for each plea.

Each of you have previously been informed by me in writing of all your constitutional rights and you have responded in writing that you have read them or had them read to you by your attorney and that you understand those rights.

If you plead guilty or are found guilty by a jury the law provides punishment in the penitentiary of the state of Alabama and the following is a range of punishment that apply to the different felony offenses.

For a class C felony with no prior felony conviction the range of punishment is from one year and one

1 day to 10 years in the state penitentiary and a fine of up to
2 \$5000. For a class C felony with one prior conviction, the
3 range of punishment is from 2 to 20 years and a fine of up to
4 \$10,000. For a class C felony with two prior felony
5 convictions the range of punishment is 10 years to 99 years
6 or life and a fine of up to \$20,000. For three or more prior
7 felony convictions followed by a class C felony, the range of
8 punishment is from 15 years to 99 years or life and a fine of
9 up to \$20,000.

10 For a class B felony with no prior felony
11 convictions, the range of punishment is from 2 to 20 years in
12 the penitentiary and a fine of up to \$20,000. For a class B
13 felony with one prior felony conviction, the range of
14 punishment is from 10 years to 99 years or life and a fine of
15 up to \$20,000. For a class B felony with two prior felony
16 convictions the range of punishment is from 15 years to 99
17 years or life and a fine up to \$20,000. For a class B felony
18 with three or more felony convictions, the sentence is
19 mandatory imprisonment for life or any term not less than 20
20 years and a fine of up to \$20,000.

21 For a class A felony with no prior felony
22 convictions the range of punishment is from 10 years to 99
23 years or life and a fine of up to \$20,000. For a class A
24 felony with one prior felony conviction, the range of
25 punishment is from 15 years to 99 years or life and a fine of

1 up to \$20,000. For a class A felony with two prior felony
2 convictions the range of punishment is for life or any term
3 not less than 99 years and a fine of up to \$20,000. For a
4 class A felony with three prior felony convictions, but with
5 no prior felony conviction for a class A felony, there's a
6 sentence of mandatory imprisonment for life or life without
7 parole and fine of up to \$20,000 at the discretion of the
8 trial judge. For a class A felony where you have three or
9 more prior felony convictions any one or more of which is
10 itself a class A felony, there is a mandatory imprisonment
11 for life without the possibility of parole and a fine of up
12 to \$20,000.

13 In addition to any disposition and fine
14 authorized by law in connection with offenses involving the
15 sale or possession of marijuana or a controlled substance or
16 the attempt to commit, conspiracy to commit, or solicitation
17 to commit a controlled substance crime, every person shall be
18 assessed an additional penalty of \$1,000 for first offenders
19 and \$2,000 for second and subsequent offenders.

20 The law also provides that in addition to any
21 sentence imposed upon any person convicted of an unlawful
22 sale of a controlled substance, there is a penalty of five
23 years imprisonment with no provision for probation if the
24 unlawful sale was on or within a three mile radius of a
25 school or housing authority property.

1 The law also provides for enhancements of
2 sentence under certain circumstances. If a firearm or deadly
3 weapon was used or attempted to be used. For example, the
4 term of imprisonment for a class A felony is not less than 20
5 years and for a class B or C felony, the term of imprisonment
6 is not less than 10 years.

7 If you plead guilty, I will set the punishment
8 within the limits prescribed by law and as outlined in the
9 plea agreement signed by you, your attorney and the
10 prosecutor.

11 Sentences in Alabama can either run
12 concurrently or consecutively. If they run consecutively,
13 you must finish one sentence before you begin service of the
14 next. If they run concurrently, you can serve more than one
15 sentence at the same time. For example, two 10-year
16 sentences running consecutively would in legal effect be one
17 20-year sentence; two 10-year sentences running concurrently
18 in legal effect would be one 10-year sentence.

19 You have the right to plead not guilty, not
20 guilty by reason of mental disease or defect or both and you
21 have the right to persist in any such plea that has already
22 been made.

23 Under our law you have the right or privilege
24 against self incrimination. That is you have the right to
25 remain silent and you may not be forced or compelled to give

1 testimony or evidence against yourself. The burden of proof
2 is on the State to prove beyond a reasonable doubt that you
3 are guilty and the State cannot even comment on your failure
4 to testify. By pleading guilty you waive or give up the
5 right to remain silent.

6 You have the right to a public jury trial. In
7 a jury trial a jury of 12 persons would determine your guilt
8 or innocence. By pleading guilty you waive or give up the
9 right to a jury trial.

10 You have the right to confront the witnesses
11 against you and have your attorney cross-examine them. By
12 pleading guilty you waive or give up the right to confront
13 the witnesses against you.

14 You have the right to testify and to present
15 evidence on your own behalf. By pleading guilty you waive or
16 give up the right to testify and the right to present
17 evidence on your own behalf.

18 You have the right to the aid of compulsory
19 process in securing the attendance of witnesses. That is you
20 have the right to subpoena those persons who you feel would
21 be necessary witnesses in the trial of your case. If those
22 persons fail to appear after having been subpoenaed I would
23 issue process whereby they would be located and brought
24 before the Court to testify for you at trial. By pleading
25 guilty you waive or give up the right to subpoena witnesses.

1 If I accept your guilty pleas there will be no
2 further trial on the issue of your guilt or innocence and
3 there will be no appeal from the conviction based upon your
4 plea of guilty.

5 There can be no promise made in order to get
6 you to plea guilty other than the plea agreement reached
7 between you, your attorney and the prosecutor. There can be
8 no threats, force or coercion used against you in order to
9 get you to plead guilty.

10 When I refer to the plea agreement that means
11 that particular written document that contains all the terms
12 and conditions of the negotiated plea agreement entered
13 between you, your attorney and the prosecutor.

14 All fines, costs and assessments including
15 courts costs, fines, reimbursement of attorneys fees to the
16 State, payment to the County for any medical expenses
17 incurred while in custody, and all other legal assessments
18 contained in that plea agreement. These cost assessments and
19 fines will be incorporated into the final order that carries
20 and terms and conditions of your plea of guilty and your
21 conviction based upon that plea.

22 One other thing that does apply as well is
23 that you are subject to being required to do some amount of
24 the community service work. As a general rule of thumb, if
25 you plea to a misdemeanor that would be 30 days or less; if

1 you have a felony conviction that can be from 30 to 60 days.
2 There are different factors that would be considered on
3 community service, but I am going ahead and putting everyone
4 on notice of that as a potential additional condition on your
5 sentence.

6 The hearings on all probation issues,
7 sentencing issues, and if necessary restitution issues will
8 be set for 9:00, Monday, December 12.

9 *****

10 THE COURT: *State versus Roscoe Holloway.*

11 Mr. Holloway, you are charged with robbery
12 third degree a class C felony. Do you understand that
13 charge?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand the range of
16 punishment?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand the difference in
19 concurrent and consecutive sentences?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. Kitchens, you are the attorney for
22 this defendant, did you thoroughly explain to him his
23 constitutional rights and discuss with him the facts of the
24 case?

25 MR. KITCHENS: Yes, sir.

1 THE COURT: Likewise, Mr. Holloway, did you tell
2 your attorney all the facts of the case and discuss your
3 constitutional rights with him?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Did you hear and understand each of the
6 rights I explained to you earlier?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you waive and give up each of those
9 rights?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Has there been any threat, force or
12 coercion used against you to get you to plead guilty?

13 THE DEFENDANT: No, sir.

14 THE COURT: Has any promise been made to you to get
15 you to plead guilty other than the plea agreement?

16 THE DEFENDANT: No, sir.

17 THE COURT: Are you guilty as charged?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Tell me briefly what you did that led
20 to this charge.

21 THE DEFENDANT: I took money from the Trading Post.

22 THE COURT: Trading Post? Was that from a person
23 present?

24 THE DEFENDANT: I accidentally bumped the woman.

25 MR. KITCHENS: He said he accidentally bumped the

1 woman that owned it. Shirley Falco. He took the money from
2 her and she tried to stop him and he bumped her with the car.

3 MS. NEWSOME: He bumped her with the car as he was
4 leaving.

5 THE COURT: Do you concur in his plea of guilty?

6 MR. KITCHENS: Yes, sir.

7 THE COURT: It is the judgment of the Court that
8 your plea of guilty is intelligently and understandingly
9 made, that the plea is voluntary and that there are facts to
10 support your plea. I, therefore, allow you to withdraw your
11 plea of not guilty, I do accept your plea of guilty, and I
12 find you guilty of robbery third degree a class C felony as
13 charged in the indictment. Do you have anything to say
14 before the Court passes sentence?

15 MR. KITCHENS: Judge, he's applying for a split.

16 THE COURT: I note on the plea agreement there are
17 six prior felony convictions; correct?

18 MR. KITCHENS: Yes, sir.

19 THE COURT: Is that right?

20 THE DEFENDANT: Yes, sir.

21 MR. KITCHENS: That's what they say they can prove.

22 THE DEFENDANT: That is right.

23 MR. KITCHENS: I have not gone back to see if there
24 are more or less.

25 THE COURT: After so far, you want to stop looking.

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1 MR. KITCHENS: Yes, sir.

2 THE COURT: It is the judgment and sentence of the
3 Court that you be, and hereby are, sentenced to the
4 penitentiary of the State of Alabama for a term of 15 years.
5 That would run concurrent with any other sentence. The
6 application for split sentence just made by Mr. Kitchens is
7 set for December 12.

8 THE DEFENDANT: Okay.

9 THE COURT: All fines, costs and assessments that
10 are included in the plea agreement will become part of the
11 order. There also is the possibility of community service.
12 In this case, as a felony, it would be 30 to 60 days of
13 community service. I understand that it is a 15-year
14 sentence and I understand you are making application for
15 split sentence, and I will consider it on that day. That's
16 it.

17 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED)

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SENTENCING

PROCEEDINGS:

THE COURT: *State versus Roscoe Holloway*. There's been an application made for split sentence in this case; is that correct?

MR. KITCHENS: Yes. Yes, sir.

THE COURT: All right. Defense may proceed with anything they wish to submit in support of that application.

MR. KITCHENS: Judge, we have asked for a split sentence and as I understand the State has agreed does not oppose that. The probation officer has stated that he recommends a long-term substance abuse program. Which, obviously, that could be accomplished through the split sentence. Mr. Holloway, in essence, committed the crime of shoplifting, but when he left the place, he grazed the proprietor with the -- well, there were no injuries on the person. And, so, anyway, the touching made it a felony. His record while somewhat extensive. If you look at it, eight of those offenses are traffic. Six were nol'pros'd or dismissed. One I was able to find a disposition. That goes back to 1992. So you start eliminating all of those. One of them says he was charged with failure to register as a sex offender and then that was nol'pros'd or vice versa. What I'm trying to get at is, a lot of the offenses on the lines there that are not -- the main thing is his five prior

1 felonies. But most of those were, as the probation officer
2 indicated, property offenses pretty much goes in line with
3 the shoplifting or theft of this money. He does not appear
4 to be a violent person. We ask for a split sentence for him
5 to serve not more than two years, Judge.

6 THE COURT: What says State?

7 MS. NEWSOME: The State is opposed to him receiving
8 probation. Part of the plea agreement was we would not
9 oppose a split sentence. But, Mr. Holloway pled as a
10 habitual offender with five or six priors. After three it is
11 really superfluous. And, if the Court is considering a split
12 sentence, we would ask the maximum split on this type of
13 split which would be a three-year split.

14 The only reason it was a robbery third, and
15 this woman was only grazed, is because somebody snatched her
16 out of the way of his oncoming car.

17 THE COURT: Before the State even said what they
18 just said on the record. After reviewing this report and the
19 record and history of the defendant, I was going to inform
20 him, Mr. Kitchens, that in the event that I granted a split,
21 it would be three years.

22 MR. KITCHENS: Yes, sir.

23 THE COURT: So that's something he may want to

24 MR. KITCHENS: Mr. Holloway, has advised me that if
25 it is more than two years he would rather take the straight

1 sentence and be done with it.

2 THE COURT: I fully understand. Application for
3 split sentence denied.

4 MR. KITCHENS: Good luck.

5 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED)

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* 12 December 2005

C E R T I F I C A T E

STATE OF ALABAMA)
AT LARGE)

I do hereby certify that the above and foregoing transcript of testimony in the matter aforementioned was taken down by me in computerized machine shorthand and transcribed under my supervision, and that the foregoing represents a true and correct transcript of the proceedings had upon said hearing.


FRANCES L. ROARK, ACCR 58,
OFFICIAL COURT REPORTER, NOTARY PUBLIC
STATE OF ALABAMA AT LARGE

My Commission Expires: 09/25/10.

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